

**BANKRUPTCY PRACTICE ORDER & FORMS  
FOR THE NORTHERN TIER OF THE**

**MIDDLE DISTRICT OF PENNSYLVANIA  
NORTHERN TIER (Wilkes-Barre Division)**

**(Counties of Bradford, Cameron, Carbon, Clinton, Columbia,  
Lackawanna, Luzerne, Lycoming, Monroe, Pike, Potter,**

**Sullivan, Susquehanna, Tioga, Wayne & Wyoming)**

**EFFECTIVE DATE: December 11, 1996**

**John J. Thomas, U.S. Bankruptcy Judge**

**¶ 7072.**

**SETTLEMENT OF CONTESTED MATTERS**

**AND ADVERSARY PROCEEDINGS**

**¶ 7072-1** Whenever, in any contested matter or adversary proceeding, counsel shall notify the clerk or the judge to whom the action is assigned in a writing either executed by all counsel of record, or containing a certification that all counsel concur, that the issues between the parties have been settled, the parties shall file any necessary stipulation and any requisite motion to compromise or settle, within thirty (30) days of the date of such written notification, or the matter may be dismissed, at the discretion of the court. A motion to extend the time, for cause shown, may be filed within the thirty (30) day period.

**¶ 9019.**

**COMPROMISE AND ARBITRATION**

**¶ 9019-1**

*Mediation.*

(a) The court may in its discretion set a case for mediation provided, however, consideration is given to any reasons advanced by the parties as to why such mediation would not be in the best interest of justice. Once set for mediation, the matter can be removed from mediation by the court or on application by the mediator.

(b) The court may assign to mediation any adversary or contested matter or any issue within such adversary or contested matter. These may include the referral of matters for settlement purposes

or otherwise to reduce the number of contested issues.

(c) Certification of Mediators.

(1) The court shall certify as many mediators as determined to be necessary under this rule.

(2) An individual may be certified to serve as a mediator if:

(A) he or she has been a member of the bar of the highest court of a state or the District of Columbia for at least eight (8) years;

(B) he or she is admitted to practice before this court;

(C) he or she has successfully completed a recognized training program for mediation; and

(D) he or she has been determined by the appointing court to be competent to perform the duties of a mediator.

(3) Anyone having the qualifications set forth in subparagraph (2) and desiring to become a mediator shall notify the court.

(4) The court shall solicit qualified individuals to serve as mediators.

(5) Each individual certified as a mediator shall take the oath or affirmation prescribed by 28 U.S.C. § 453 before serving as a mediator.

(6) The court shall maintain a list of all persons certified as mediators.

(7) The court may remove anyone from the list of certified mediators for cause.

(8) Persons acting as mediators under this rule are assisting the court in performing its judicial function. They shall be disqualified for bias or prejudice as provided by 28 U.S.C. § 144 and shall disqualify themselves in any action in which they would be required under 28 U.S.C. § 455 to disqualify themselves if they were a justice or judge.

(d) Compensation and Expenses of Mediators.

The services of the mediators shall be provided pro bono unless otherwise ordered by the court. An individual certified as a mediator shall not be called upon more than twice in a twelve month period to serve as a mediator without prior approval of the mediator.

(e) Scheduling Mediation Conference.

(1) Upon referral of a case to mediation, the court shall promptly serve the order of referral to the mediator, all counsel and any unrepresented party. The order shall include the address and telephone number and facsimile number of the mediator, counsel, and unrepresented parties. The

date of the mediation session shall be a date within thirty (30) days from the date of the order of referral.

(2) The appointment shall be considered effective unless the designee rejects the appointment within five (5) days.

(3) Upon mailing the order of referral, the clerk shall send to the mediator a copy of the docket sheet that reflects all filings to date. The mediator shall advise the clerk as to which documents in the case file the mediator desires copies of for the mediation session. Unless otherwise ordered by the court, the clerk shall provide the mediator with all requested copies free of charge to the mediator.

(4) A mediator is authorized to change the date and time for the mediation session provided the session takes place within forty-five (45) days of the date of the order of referral. Any continuance of the session beyond this forty-five (45) day period must be approved by the court.

(f) The Mediation Process.

(1) Not later than three (3) business days before the initial conference, each party shall deliver or telecopy to the mediator and to each other party a mediation conference memorandum no longer than two (2) pages, summarizing the nature of the case and the party's position on

(A) the major factual and legal issues affecting liability and damages;

(B) the relief sought by each party; and

(C) settlement.

(2) The memoranda required by this subparagraph are solely for use in the mediation process and shall not be filed with the clerk of court.

(g) The Mediation Session.

(1) The mediation session shall take place on the date and at the time set forth by the mediator. The mediation session shall take place at a neutral setting as designated by the mediator which may include the mediator's office. Except as herein authorized, the parties shall not contact or forward documents to the mediator unless the mediator requests the information.

(2) Counsel primarily responsible for the case and any unrepresented party shall attend the mediation session. All parties or principals of parties with decision-making authority must attend the mediation session in person, unless attendance is excused by the mediator for good cause shown. The participants shall be prepared to discuss: (1) All liability issues; (2) All damage issues; (3) All equitable and declaratory remedies if such are requested; and (4) The position of the parties relative to settlement. Wilful failure to attend the mediation conference shall be

reported to the court and may result in the imposition of sanctions.

(3) Except as otherwise provided in this paragraph and as may be necessary to the reporting of or the processing of complaints about unlawful or unethical conduct, nothing communicated during the mediation process (including any oral or written statement made by a party, attorney, or other participant and any proposed settlement figure stated by the mediator or on behalf of any party) shall be placed in evidence, made known to the trial court or jury, or construed for any purpose as an admission. No party shall be bound by anything done or said during the mediation process except to enforce a settlement agreement or any other agreement achieved in that process.

(4) In the event the mediator determines that no settlement is likely to result from the mediation session, the mediator shall terminate the session and promptly thereafter send a report to the court that there has been compliance with the requirements of these paragraphs, but that no resolution has been reached. In the event that a settlement is achieved at the mediation session, the mediator shall send a written report to the judge to whom the case is assigned stating that a settlement has been achieved. The parties shall be responsible for the circulation of all required notices of settlement.

(5) Notwithstanding the above paragraph, the mediator shall submit a written report to the court advising the court of the status of the mediation within sixty (60) days after the order of appointment of the mediator.

(6) No one shall have a recording or transcript made of the mediation session, including the mediator, unless otherwise agreed to by the parties.

(7) The mediator shall not be called as a witness at trial.

**¶ 9019-2** *Neutral Evaluator.* Anytime after an action or proceeding has been filed, the action may be referred to a neutral evaluator to be selected with the approval of the parties.

**¶ 9019-3** *Relationship to Other Procedures.* Paragraph 9019-1 et seq. shall not be construed as modifying the provisions of Fed.R.Civ.P. 16 and 26, or B.P.O. ¶ 7016-1 and ¶ 7026-1 or of any order or direction by the court, nor shall it be construed as precluding the use of any kind of mediation outside of the mediation process established by this rule or the use of any other means of alternative dispute resolution.

